

# U.S. Customs Service

## *Treasury Decisions*

19 CFR Part 122

(T.D. 02-27)

### NEW USER FEE AIRPORT

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations to reflect the establishment of a new user fee airport in Dallas, Texas. A user fee airport is one which, while not qualifying for designation as an international or landing rights airport, has been approved by the Commissioner of Customs to receive, for a fee, the services of a Customs officer for the processing of aircraft entering the United States and their passengers and cargo.

EFFECTIVE DATE: May 21, 2002.

FOR FURTHER INFORMATION CONTACT: Nancy Bruner, Mission Support, Office of Field Operations, (202) 927-2290.

#### SUPPLEMENTARY INFORMATION:

##### BACKGROUND

Part 122, Customs Regulations (19 CFR Part 122), sets forth regulations that are applicable to all international air commerce relating to the entry and clearance of aircraft and the transportation of persons and cargo by aircraft.

Under § 1644a, Title 19, United States Code (19 U.S.C. 1644a), the Secretary of the Treasury is authorized to designate places in the United States as ports of entry for civil aircraft arriving from any place outside of the United States, and for merchandise carried on the aircraft. These airports are referred to as international airports, and the location and name of each are listed in § 122.13, Customs Regulations (19 CFR 122.13). In accordance with § 122.33, Customs Regulations (19 CFR 122.33), the first landing of every civil aircraft entering the United States from a foreign area must be at one of these international airports,

unless the aircraft has been specifically exempted from this requirement or permission to land elsewhere has been granted. Customs officers are assigned to all international airports to accept entries of merchandise, collect duties and enforce the customs laws and regulations.

Other than making an emergency or forced landing, if a civil aircraft desires to land at an airport not designated by Customs as an international airport, the pilot may request permission to land at a specific airport. If permission is granted, Customs will assign personnel to that airport for the aircraft. The airport where the aircraft is permitted to land is called a landing rights airport (19 CFR 122.14).

Section 236 of Pub. L. 98-573 (the Trade and Tariff Act of 1984), codified at 19 U.S.C. 58b, created an option for civil aircraft desiring to land at an airport other than an international or landing rights airport. A civil aircraft arriving from a place outside of the United States may ask Customs for permission to land at an airport designated by the Secretary of the Treasury as a user fee airport.

Pursuant to 19 U.S.C. 58b, an airport may be designated as a user fee airport if the Secretary of the Treasury determines that the volume of Customs business at the airport is insufficient to justify the availability of Customs services at the airport and the governor of the state in which the airport is located approves the designation. Generally, the type of airport that would seek designation as a user fee airport would be one at which a company, such as an air courier service, has a specialized interest in regularly landing.

As the volume of business anticipated at this type of airport is insufficient to justify its designation as an international or landing rights airport, the availability of Customs services is not paid for out of the Customs appropriations from the general treasury of the United States. Instead, the services of Customs officers are provided on a fully reimbursable basis to be paid for by the user fee airport on behalf of the recipients of the services.

The fees which are to be charged at user fee airports, according to the statute, shall be paid by each person using the Customs services at the airport and shall be in the amount equal to the expenses incurred by the Secretary of the Treasury in providing Customs services which are rendered to such person at such airport, including the salary and expenses of those employed by the Secretary of the Treasury to provide the Customs services. To implement this provision, generally, the airport seeking the designation as a user fee airport of that airport's authority agrees to pay Customs a flat fee annually and the users of the airport are to reimburse that airport/airport authority. The airport/airport authority agrees to set and periodically to review its charges to ensure that they are in accord with the airport's expenses.

Pursuant to Treasury Department Order No. 165, Revised (Treasury Decision 53564), all the rights, privileges, powers and duties vested in the Secretary of the Treasury by the Tariff Act of 1930, as amended, by

the navigation laws, or by any other laws administered by Customs, are transferred to the Commissioner of Customs. Accordingly, the authority granted to the Secretary of the Treasury to designate user fee airports and to determine appropriate fees is delegated to the Commissioner of Customs.

Under this authority, Customs has determined that certain conditions must be met before an airport can be designated as a user fee airport. At least one full-time Customs officer must be requested, and the airport must be responsible for providing Customs with satisfactory office space, equipment and supplies, at no cost to the Federal Government.

Thirty-six airports are currently listed in § 122.15, Customs Regulations, as user fee airports. This document revises the list of user fee airports. It adds McKinney Municipal Airport, in Dallas, Texas, to this listing of designated user fee airports.

#### INAPPLICABILITY OF PUBLIC NOTICE AND DELAYED EFFECTIVE DATE REQUIREMENTS

Because this amendment merely updates the list of user fee airports designated by the Commissioner of Customs in accordance with 19 U.S.C. 58b and neither imposes any additional burdens on, nor takes away any existing rights or privileges from, the public, pursuant to 5 U.S.C. 553(b)(B), notice and public procedure are unnecessary, and for the same reasons, pursuant to 5 U.S.C. 553(d)(3) a delayed effective date is not required.

#### REGULATORY FLEXIBILITY ACT AND EXECUTIVE ORDER 12866

Because no notice of proposed rulemaking is required for this final rule, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply. Agency organization matters such as this amendment are exempt from consideration under Executive Order 12866.

#### DRAFTING INFORMATION

The principal author of this document was Janet L. Johnson, Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

#### LIST OF SUBJECTS IN 19 CFR PART 122

Air carriers, Aircraft, Airports, Customs Duties and Inspection, Freight.

#### AMENDMENT TO THE REGULATIONS

Part 122, Customs Regulations (19 CFR Part 122) is amended as set forth below.

#### PART 122—AIR COMMERCE REGULATIONS

1. The authority citation for Part 122, Customs Regulations, continues to read as follows:

**Authority:** 5 U.S.C. 301; 19 U.S.C. 58b, 66, 1433, 1436, 1448, 1459, 1590, 1594, 1623, 1624, 1644, 1644a.

2. The listing of user fee airports in section 122.15(b) is amended by adding, in alphabetical order, in the “Location” column, “Dallas, Texas” and by adding on the same line, in the “Name” column, “McKinney Municipal Airport”.

ROBERT C. BONNER,  
*Commissioner of Customs.*

Approved: May 16, 2002.

TIMOTHY E. SKUD,  
*Deputy Assistant Secretary of the Treasury.*

[Published in the Federal Register, May 21, 2002 (67 FR 35722)]

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## 19 CFR Part 141

(T.D. 02–28)

### TECHNICAL AMENDMENT TO THE CUSTOMS REGULATIONS: REUSABLE SHIPPING DEVICES ARRIVING FROM CANADA AND MEXICO

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations to include certain reusable shipping devices arriving from Canada or Mexico in the list of merchandise excepted from the requirement that all merchandise imported into the United States be entered. The substantive regulation allowing for these types of devices to be excepted from entry is set forth in § 10.41b(b) of the Customs Regulations. During a periodic review of its regulations to ensure that they are current, correct and consistent, Customs noted that in § 141.4 of the Customs Regulations, the list of merchandise excepted from the entry requirement did not cross-reference § 10.41b(b). This document remedies that omission.

EFFECTIVE DATE: May 23, 2002.

FOR FURTHER INFORMATION CONTACT: Glen Vereb, Office of Regulations and Rulings, 202–927–1327.

#### SUPPLEMENTARY INFORMATION:

##### BACKGROUND

Under § 141.4(a), Customs Regulations (19 CFR 141.4(a)), all merchandise imported into the United States is required to be entered, unless specifically excepted. The exceptions from the general rule that all

imported merchandise must be entered are set forth in § 141.4(b), Customs Regulations (19 CFR 141.4(b)). In particular, § 141.4(b)(3) excepts instruments of international trade as described in § 10.41a, Customs Regulations (19 CFR 10.41a). In addition to this exemption from entry, however, certain reusable shipping devices arriving from Canada or Mexico are also exempted from entry pursuant to § 10.41b(b), Customs Regulations (19 CFR 10.41b(b)), as amended by Treasury Decision (T.D.) 96–20 (61 FR 7987) of March 1, 1996.

Accordingly, this document amends § 141.4(b)(3), Customs Regulations (19 CFR 141.4(b)(3)), to include a reference to § 10.41b(b), in order to reflect that reusable shipping devices from Canada or Mexico are also exempted from Customs entry requirements. Furthermore, a reference is added in § 141.4(b)(3) to Chapter 98, Subchapter III, U.S. Note 3, Harmonized Tariff Schedule of the United States (HTSUS), which provides the underlying legal authority for the exemption of the specified shipping devices from Customs entry requirements.

ADMINISTRATIVE PROCEDURE ACT,  
THE REGULATORY FLEXIBILITY ACT AND EXECUTIVE ORDER 12866

Because the amendments merely conform with existing law or regulation, notice and public procedure are unnecessary, and for the same reason, pursuant to 5 U.S.C. 553(d)(3), a delayed effective date is not required. Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply. Nor do these amendments meet the criteria for a “significant regulatory action” as specified in Executive Order 12866.

DRAFTING INFORMATION

The principal author of this document was Janet L. Johnson, Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

LIST OF SUBJECTS IN 19 CFR PART 141

Customs duties and inspection, Entry of merchandise, Release of merchandise, Reporting and recordkeeping requirements.

AMENDMENT TO THE REGULATION

Part 141, Customs Regulations (19 CFR 141) is amended as set forth below.

PART 141—ENTRY OF MERCHANDISE

1. The general authority citation for Part 141, Customs Regulations, continues to read, and the specific sectional authority for § 141.4 is revised to read, as follows:

**Authority:** 19 U.S.C. 66, 1448, 1484, 1624.

\* \* \* \* \*

Section 141.4 also issued under 19 U.S.C 1202 (General Note 19; Chapter 86, Additional U.S. Note 1; Chapter 89, Additional U.S. Note 1;

Chapter 98, Subchapter III, U.S. Notes 3 and 4; Harmonized Tariff Schedule of the United States), 1498;

\* \* \* \* \*

2. Section 141.4 is amended by revising paragraph (b)(3) to read as follows:

**§ 141.4 Entry required.**

\* \* \* \* \*

(b) *Exceptions.*

\* \* \* \* \*

(3) Instruments of international traffic described in § 10.41a and § 10.41b(b) of this chapter, under the conditions provided for in those sections. See also Chapter 98, Subpart III, U.S. Notes 3 and 4, HTSUS.

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ROBERT C. BONNER,  
*Commissioner of Customs.*

Approved: May 17, 2002.

TIMOTHY E. SKUD,

*Deputy Assistant Secretary of the Treasury.*

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